

Cornerstone Masonry Constructors, LLC and Lanny McCord, d/b/a Earthborn Masonry, a Single Employer/Alter Egos and International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL-CIO. Cases 7-CA-46945 and 7-CA-47043

December 8, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND MEISBURG

The General Counsel seeks a default judgment in this case on the ground that the Respondents have failed to file an answer to the consolidated amended complaint. Upon a charge filed by the Union in Case 7-CA-46945 on December 10, 2003, and a charge and amended charge filed by the Union in Case 7-CA-47043 on January 14 and March 26, 2004, respectively, the General Counsel issued the consolidated amended complaint on March 31, 2004, against Cornerstone Masonry Constructors, LLC and Lanny McCord, d/b/a Earthborn Masonry, a Single Employer/Alter Egos, the Respondents, alleging that they have violated Section 8(a)(1), (3), and (5) of the Act. The Respondents failed to file an answer.

On April 23, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On April 29, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by April 14, 2004, all the allegations in the complaint would be considered admitted.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent Cornerstone, a corporation, with an office and place of business at 302 S. Summit, Webberville, Michigan, has been engaged in the

construction industry as an installer of commercial masonry.

At all material times, Respondent Earthborn has been owned by Lanny McCord, as a sole proprietorship, doing business as Earthborn Masonry, with an office and place of business at 302 S. Summit, Webberville, Michigan, and has been engaged in the construction industry as an installer of commercial masonry.

During 2003, the Respondents, in conducting the business operations described above, derived gross revenues in excess of \$500,000, and purchased goods and materials valued in excess of \$50,000, which were shipped to their Webberville facility from Michigan distributors that purchased and received the goods directly from suppliers located outside the State of Michigan.

At all material times, Michigan Council of Employers of Bricklayers and Allied Craftworkers (MCE), the Association, has been an organization composed of employers engaged in the construction industry, which exists, in whole or in part, for the purpose of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Charging Party Union.

At all material times, the Respondents have been employer-members of the Association and have designated the Association to represent them in negotiating and administering collective-bargaining agreements with various labor organizations, including the Charging Party Union.

During 2003, the employer-members of the Association collectively had gross revenues in excess of \$500,000 and, in the course and conduct of their business operations, purchased and received at their Michigan jobsites, goods and materials valued in excess of \$50,000 directly from points located outside the State of Michigan.

We find that, at all material times, each of the Respondents has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Lanny J. McCord has held the position of president/owner and has been a supervisor of the Respondents within the meaning of Section 2(11) of the Act and an agent of the Respondents within the meaning of Section 2(13) of the Act.

The following employees (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing work covered under the terms of the collective-bargaining agreement between the Association and the Charging Union within the jurisdiction of the Charging Union, who are members of any Local Union affiliated with the Charging Union, and also of such other employees recognized by law as part of the appropriate collective bargaining unit.

Since about January 31, 2001, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then has been recognized as such by Respondent Cornerstone. This recognition has been embodied in a recognition agreement dated January 31, 2001, and in successive collective-bargaining agreements, the most recent of which is effective from August 1, 2003, to April 30, 2005.

At all times since at least January 1, 2001, based on Section 9(a) of the Act, the Union has been the exclusive representative of the unit.

On about November 5, 2003, Respondent Earthborn was established by Respondent Cornerstone as a subordinate instrument to and a disguised continuation of Respondent Cornerstone.

Since November 5, 2003, Respondent Earthborn has continued to operate the business of Respondent Cornerstone in basically unchanged form, and has employed as a majority of its unit employees individuals who were previously unit employees of Respondent Cornerstone.

Based on the conduct described above, Respondent Cornerstone and Respondent Earthborn are, and have been at all material times, alter egos and a single employer.

Based on the operations described above, Respondent Earthborn has continued the employing entity and is a successor to Respondent Cornerstone.

On about November 5, 2003, the Respondents, by their agent, Lanny McCord, threatened employees that they should resign from their jobs with the Respondents if they did not want to work nonunion.

On about November 5, 2003, by the conduct described above, the Respondents caused the termination of their employees, Elton Henry and Robert Thomas.

The Respondents engaged in the conduct described above because Henry and Thomas supported the Union and engaged in concerted activities, and to discourage employees from engaging in these activities or any other activities in support of a labor organization.

On November 12, 2003, by certified mail, the Union, by its business agent, James Bitzer, requested that Respondent Cornerstone furnish the Union with certain information, set forth in the attached appendix A.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.¹

Since about November 12, 2003, the Respondents have failed and refused to furnish the Union with the information it requested.

Since about November 5, 2003, Respondent Earthborn has refused to recognize or bargain with the Union as the exclusive collective-bargaining representative of the unit, and has failed to continue in effect all the terms and conditions of employment of the unit contained in the August 2003–April 2005 collective-bargaining agreement between Respondent Cornerstone and the Union.

The subjects set forth above relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Respondent Earthborn engaged in the conduct described above without the Union's consent.

As set forth in our findings above, the complaint alleges both that Respondent Cornerstone and Respondent Earthborn are alter egos and a single employer, and also that Earthborn is a successor employer to Cornerstone. By failing to file an answer to the complaint, the Respondents have admitted these allegations. Nevertheless, with respect to Earthborn's obligations regarding the Union there is a legally significant distinction to be drawn between Earthborn's status as an alter ego of Cornerstone or a single employer with it, and Earthborn's status as a successor to Cornerstone.² As a successor employer, Earthborn is obligated to bargain with the Union, but is not required to honor Cornerstone's collective-bargaining agreement with the Union. *NLRB v. Burns Security Services*, 406 U.S. 168 (1973). See also *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987). As an alter ego of and single employer with Cornerstone, however, Earthborn is bound by the collective-bargaining agreement entered into between Cornerstone and the Union. *Advance Electric*, 268 NLRB 1001, 1004 (1984). Accordingly, our finding that Earthborn violated Section 8(a)(5) and (1) of the Act by failing to adhere to the terms and conditions of employment in the 2003–2005

¹ Member Schaumber is of the view that when, as here, information that is requested by a union is not presumptively relevant to the union's performance as bargaining representative then the burden is on the union to demonstrate its relevance when the information is requested from the employer. See generally his position in *Artesia Ready Mix Concrete*, 339 NLRB 1084 (2003). Based on the letter set out as app. A to this Decision, he finds that requirement was met here.

² The complaint did not plead these separate and distinct theories in the alternative. In our view, that approach would have been preferable to the manner in which the allegations were pled.

collective-bargaining agreement is based solely on our findings that Earthborn is an alter ego of Cornerstone and that the two Respondents constitute a single employer.

CONCLUSIONS OF LAW

1. By threatening employees that they should resign from their jobs if they did not want to work nonunion, the Respondents have interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By causing the termination of employees Elton Henry and Robert Thomas, the Respondents have discriminated in regard to the hire or tenure or terms and conditions of employment of their employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. By refusing to recognize or bargain with the Union since November 5, 2003; by failing and refusing to furnish the Union with the information it requested on November 12, 2003; and by failing to continue in effect all the terms and conditions of employment contained in the August 2003–April 2005 contract between Respondent Cornerstone and the Union, the Respondents have failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

The Respondents' unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondents violated Section 8(a)(3) and (1) of the Act by causing the termination of employees Elton Henry and Robert Thomas, we shall order the Respondents to offer Henry and Thomas full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondents shall also be required to remove from its files all references to the unlawful terminations of Henry and Thomas, and to notify them in writing that

this has been done and that the terminations will not be used against them.

In addition, having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order the Respondents to recognize the Union as the exclusive representative of its unit employees and, on request, to meet and bargain in good faith with the Union as the exclusive representative of the unit employees. We also shall order the Respondents to abide by and give full force and effect to the August 1, 2003, to April 30, 2005 collective-bargaining agreement.

Further, having found that the Respondents have failed and refused to apply the terms and conditions of the collective-bargaining agreement, the Respondents shall be required to make whole the unit employees for any loss of earnings and other benefits they may have suffered as a result of the Respondents' failure to comply with the agreement since November 5, 2003, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra. In the event that the agreement provides for contributions to pension and benefit funds, we shall order the Respondents to make all contractually-required contributions to these funds that they have failed to make since November 5, 2003, including any additional amounts due to the funds on behalf of the unit employees in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979). The Respondents shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.³

In addition, we shall order the Respondents to furnish the Union with the information it requested on November 12, 2003.

ORDER

The National Labor Relations Board orders that the Respondents, Cornerstone Masonry Constructors, LLC and Lanny McCord, d/b/a Earthborn Masonry, a Single Employer/Alter Egos, Webberville, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

³ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the fund.

(a) Refusing to recognize and bargain with International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL-CIO as the exclusive representative of employees in the following unit:

All employees performing work covered under the terms of the collective-bargaining agreement between the Association and the Charging Union within the jurisdiction of the Charging Union, who are members of any Local Union affiliated with the Charging Union, and also of such other employees recognized by law as part of the appropriate collective bargaining unit.

(b) Failing and refusing to apply the terms and conditions of the August 1, 2003, to April 30, 2005 collective-bargaining agreement entered into with the Union.

(c) Failing and refusing to furnish the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(d) Threatening employees that they should resign from their jobs if they did not want to work nonunion.

(e) Causing the termination of, or otherwise discriminating against, employees because they support International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL-CIO, or any other labor organization, or engage in union or protected concerted activities, or to discourage employees from engaging in such activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain with the Union as the exclusive representative of the employees in the unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Abide by all the terms and conditions of the August 2003 to April 2005 collective-bargaining agreement with the Union.

(c) Make whole all unit employees for any loss of earnings and other benefits resulting from the Respondents' refusal to comply with the terms of the collective-bargaining agreement with the Union, in the manner set forth in the remedy section of this decision.

(d) Furnish to the Union the information requested in its letter dated November 12, 2003.

(e) Within 14 days from the date of this Order, offer Elton Henry and Robert Thomas full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their

seniority or any other rights or privileges previously enjoyed.

(f) Make Elton Henry and Robert Thomas whole for any loss of earnings and other benefits resulting from the unlawful termination of their employment, in the manner set forth in the remedy section of this Decision.

(g) Within 14 days from the date of this Order, remove from their files all references to the unlawful terminations of Henry and Thomas, and within 3 days thereafter, notify them in writing that this has been done and that their unlawful discharges will not be used against them in any way.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility in Webberville, Michigan, copies of the attached notice marked "Appendix B."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since November 5, 2003.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

APPENDIX A

November 12, 2003 via fax 517-521-3876 and mail

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Lanny "J" McCord, Owner
 Cornerstone Masonry
 302 South Summitt Street
 P.O. Box 180
 Webberville, MI 48892
 Office: 1-517-521-3680

Re: BAC Local 9 Information Requests and Request
 for Documents

Dear Mr. McCord:

As you know, I am a business representative for BAC Local 9. I recently learned that you are operating your company under a new name, Earth Born Masonry, and that you told Local 9 members that you were now operating as a non-union contractor. You also told employees that they would no be paid any fringe benefits and that the CBA would not apply. I understand that you have taken this action in part because a fund audit has shown that you owe large sums of monies. I attach a copy of the business card you passed out with the new name you are using.

Is this information that I relayed in the first paragraph correct?

Please advise me whether you now intend to operate "non-union" and why you are operating under a different name. BAC is entitled to this information to ensure compliance with the current and just negotiated BAC-MCE CBA. You gave your power of attorney to MCE and sat in on negotiations for the new CBA.

Local 9 requests that you provide the following documents in connection with Earth Born Masonry:

- A. Articles of incorporation, if any.
- B. Assumed name certificate, if any.
- C. Payroll records.
- D. W-2 tax documents.

77 Requests for Information. Local 9 also requests information and documents set forth in the attached document that list 77 questions. This request is entirely justified based on BAC's right to enforce the CBA and the NLRA.

Therefore, BAC demands that you provide the information request as set forth above and in the attachment. Please provide the information as soon as possible. You should not wait until you have answered all the questions but should provide answers.

If you have any questions, please call or write to me.

Sincerely,
 /s/
 James Bitzer

Attachment

INFORMATION REQUEST UNDER NLRA TO CORNERSTONE MASONRY FROM BAC LOCAL 9: NOVEMBER 12, 2003

1. Describe the type of business in which Earth Born Masonry engages and the date it started operations.
2. Define the geographic area in which Cornerstone Masonry does business.
 Define the geographic area in which Earth Born Masonry does business.
3. State the business address(es) and identify all office locations of Cornerstone Masonry.
 State the business address(es) and identify all office locations of Gary's Electric Service.
4. Identify Cornerstone Masonry's company's post office box(es) by number and location.
 Identify Earth Born Masonry's post office box(es) by number and location.
5. Identify Cornerstone Masonry's business phone number(s) and directory listing(s).
 Identify your Earth Born Masonry's business phone number(s) and directory listing(s).
6. Identify the banking institution, branch location, and account number of Cornerstone Masonry's bank account(s).
 Identify the banking institution, branch location, and account number of Earth Born Masonry's bank account(s).
7. Identify the banking institution, branch location, and account number of Cornerstone Masonry's payroll account(s) not identified above.
 Identify the banking institution, branch location, and account number of Earth Born Masonry's payroll account(s) not identified above.
8. Identify where and by whom Cornerstone Masonry's accounting records are kept.
 Identify where and by whom Earth Born Masonry's accounting records are kept.
9. Identify Cornerstone Masonry's principal accountant.
 Identify Earth Born Masonry's principal accountant.
10. Identify where and by whom Cornerstone Masonry's corporate records are kept.
 Identify where and by whom Earth Born Masonry's corporate records are kept.
11. Identify where and by whom Cornerstone Masonry's other business record books are kept.

- Identify where and by whom Earth Born Masonry's other business record books are kept.
12. Identify Cornerstone Masonry's principal book-keeper.
Identify Earth Born Masonry's principal book-keeper.
 13. Identify Cornerstone Masonry's principal payroll preparer.
Identify Earth Born Masonry's principal payroll preparer.
 14. Identify Cornerstone Masonry's contractor license number for states where it does construction business.
Identify Earth Born Masonry's contractor license number for states where it does construction business.
 15. Identify the carrier and policy number for Cornerstone Masonry's workers compensation insurance.
Identify the carrier and policy number for Earth Born Masonry's workers' compensation insurance.
 16. Identify the carrier and policy number for Cornerstone Masonry's other health insurance program(s).
Identify the carrier and policy number for Earth Born Masonry's other health insurance program(s).
 17. (a) Identify Cornerstone Masonry's federal tax payer identification number.
Identify Earth Born Masonry's federal tax payer identification number.
(b) Identify where and by whom Cornerstone Masonry's federal tax returns are kept.
Identify where and by whom Earth Born Masonry's federal tax returns are kept.
 18. (a) Identify Cornerstone Masonry's other federal or state taxpayer identification numbers.
Identify Earth Born Masonry's other federal or state taxpayer identification numbers.
(b) Identify where and by whom Cornerstone Masonry's other federal or state reports are kept.
Identify where and by whom Earth Born Masonry's other federal or state reports are kept.
 19. Identify amount(s) involved, reason(s) for, and state(s) of transfer of any funds between Cornerstone Masonry and Earth Born Masonry.
 20. Identify source(s) and amount(s) of Cornerstone Masonry's line(s) of credit.
 21. Identify the source(s) and amount(s) of Earth Born Masonry's line(s) of credit.
 21. Identify the amount(s) involved and date(s) when Cornerstone Masonry has operated with a guarantee of performance by Earth Born Masonry.
Identify the amount(s) involved and date(s) when Earth Born Masonry has operated with a guarantee of performance by your Company.
 22. Identify business(es) to whom Cornerstone Masonry rents, leases or otherwise provides office space.
Identify business(es) to whom Gary Electrical Service rents, leases or otherwise provides office space.
Identify the calendar period and terms by which Cornerstone Masonry provides office space to Earth Born Masonry, or is provided with office space by Earth Born Masonry.
 23. List all employees of Earth Born Masonry since 1-1-2003.
 24. List all employees of Cornerstone Masonry since 1-1-2003.
 25. What did Lanny McCord tell employees on Wednesday, November 5, 2003 about Earth Born Masonry.
 26. Name the employees that have worked for Earth Born Masonry since 11-5-2003, and state their job title, wage rate, benefits and job site location.
 27. Name the employees that have worked for Cornerstone Masonry since 11-5-2003, and state their job title, wage rate, benefits and job site location.
 28. What is current status of Cornerstone Masonry? Is it open and operating?
 29. Is Cornerstone Masonry being audited by the BAC fringe benefit funds?
 30. Regarding equipment, transactions between Cornerstone Masonry and Earth Born Masonry, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.
 31. Regarding equipment, transactions between Cornerstone Masonry and business(es) separate from Earth Born Masonry, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.
 32. Regarding equipment, transactions between Earth Born Masonry and its business(es) separate from

- your company, identify the purchase, rental, or lease rate, equipment involved, calendar period, and dollar volume of each transaction.
33. Identify those of the following services that are provided to Earth Born Masonry by or at your company.
 - (a) administrative
 - (b) bookkeeping
 - (c) clerical
 - (d) detailing
 - (e) drafting
 - (f) engineering
 - (g) estimating
 - (h) managerial
 - (i) pattern making
 34. Identify those of the following services that are provided to Cornerstone Masonry by or at Earth Born Masonry.
 - (a) administrative
 - (b) bookkeeping
 - (c) clerical
 - (d) detailing
 - (e) drafting
 - (f) engineering
 - (g) estimating
 - (h) managerial
 - (i) pattern making
 - (j) sketching
 - (k) other
 35. Identify where Cornerstone Masonry advertises for business.
Identify where Earth Born Masonry advertises for business.
 36. Identify Cornerstone Masonry's customers.
Identify Earth Born Masonry's customers.
 37. Identify customers Cornerstone Masonry has referred to Earth Born Masonry.
Identify customers Earth Born Masonry has referred to Cornerstone Masonry.
 38. What customers of Earth Born Masonry are now or were formerly customers of your company.
 39. Regarding customers identified above as common to Cornerstone Masonry and Earth Born Masonry, state the calendar period and dollar volume of work performed for the customer by your company.
Regarding customers identified above as common to Cornerstone Masonry and Earth Born Masonry, state the calendar period and dollar volume of work performed for the customer by Earth Born Masonry.
 40. State the dollar volume of business per job performed by your company.
State the dollar volume of business per job performed by Earth Born Masonry.
Does Cornerstone Masonry negotiate jobs to obtain work?
Does Earth Born Masonry negotiate jobs to obtain work?
 42. Does Cornerstone Masonry bid jobs to obtain work?
Does Earth Born Masonry bid jobs to obtain work?
 43. Identify those persons who bid and/or negotiate Cornerstone Masonry's work.
Identify those persons who bid and/or negotiate Earth Born Masonry's work.
 44. State the dollar volume minimum and/or maximum (if any) as established by law or regulation, that Earth Born Masonry may bid on public work projects.
State the dollar volume minimum and/or maximum (if any) as established by law or regulation, that Cornerstone Masonry may bid on public work projects.
 45. Identify by customer, calendar period, and dollar volume any job(s) on which Cornerstone Masonry and Earth Born Masonry have bid competitively.
 46. Identify by customer, calendar period, and dollar volume any work which Cornerstone Masonry has subcontracted to, or received by subcontract from Earth Born Masonry.
 47. Identify subcontract work arranged by written agreement between Cornerstone Masonry and Earth Born Masonry.
 48. State the reason for each subcontract let by Cornerstone Masonry to Earth Born Masonry. State the reason for each subcontract let by Earth Born Masonry.
 49. Identify by customer, calendar period, and dollar volume any projects on which Cornerstone Masonry has succeeded, or been succeeded by, Earth Born Masonry.
 50. Identify work Cornerstone Masonry performs on Earth Born Masonry's equipment and tools.
Identify work Earth Born Masonry performs on Cornerstone Masonry's equipment and tools.

51. Identify where Cornerstone Masonry advertises for employment hires.
Identify where Earth Born Masonry advertises for employment hires.
52. Identify by job title or craft position the number of employees employed by Earth Born Masonry since November 22, 1990.
53. Identify the skills that Cornerstone Masonry's employees possess. Identify the skills that Earth Born Masonry's employees possess.
54. Identify where Cornerstone Masonry's employees report for work. Identify where Earth Born Masonry employees report for work.
55. Identify by job title or craft position and respective employment dates those employees at Cornerstone Masonry who are or have been employees Earth Born Masonry.
56. Identify by job title or craft position and respective employment dates those employees of Earth Born Masonry who are or have been employees at your company.
57. Identify by job title or craft position and transfer dates those employees otherwise transferred between Cornerstone Masonry and Earth Born Masonry.
58. Identify projects of each company on which these employees are working at the time of transfer.
59. Identify Cornerstone Masonry's (a) supervisors, (b) job superintendents, and (c) forepersons or other supervisory persons with authority to hire transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct employees, or to adjust their grievances, or effectively to recommend such action.
Identify Earth Born Masonry's (a) supervisors, (b) job superintendents, and (c) forepersons or other supervisory persons with authority to hire transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsible to direct employees to adjust their grievances, or effectively to recommend such action.
60. Regarding those supervisory persons described above as common to Cornerstone Masonry and Earth Born Masonry, identify the period(s) of employment with each company.
61. Identify Cornerstone Masonry's personnel ever authorized to supervise Earth Born Masonry's employees. Identify Earth Born Masonry's Cornerstone Masonry's personnel ever authorized to supervise Cornerstone Masonry's employees.
62. Identify by project involved, personnel involved, and date of event, any occasion when Cornerstone Masonry's personnel performed a supervisory function for Earth Born Masonry.
Identify by project involved, personnel involved, and date of event, any occasion when Earth Born Masonry's personnel performed a supervisory function for your company.
63. Identify Cornerstone Masonry's managerial personnel having authority to formulate and effectuate management policies or otherwise able to recommend or to exercise discretionary action within or even independently of established policy.
Identify Earth Born Masonry's managerial personnel having authority to formulate and effectuate management policies or otherwise able to recommend or to exercise discretionary action within or even independently of established policy.
64. Identify Cornerstone Masonry's representative who have authority to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline supervisory personnel, or responsible to direct supervisory personnel, or to adjust their grievances, or effectively recommend such action.
Identify Earth Born Masonry's representative who have authority to hire, transfer, suspend, layoff recall, promote, discharge, assign, reward or discipline supervisory personnel, or responsible to direct supervisory personnel, or to adjust their grievances, or effectively recommend such action.
65. Identify Cornerstone Masonry's representatives otherwise actively involved with day-to-day management or operations.
Identify Earth Born Masonry's representative representatives otherwise actively involved with day-to-day management or operations.
66. Identify by title and respective dates of employment those managerial personnel of Cornerstone Masonry ever employed by Earth Born Masonry.
Identify by title and respective dates of employment those managerial personnel of Earth Born Masonry ever employed by your company.
67. Describe Cornerstone Masonry's compensation program including employee wage rates.
Describe Earth Born Masonry's compensation program including employee wage rates.

68. Describe Cornerstone Masonry's fringe benefits program.
Describe Earth Born Masonry's fringe benefits program.
69. Identify Cornerstone Masonry's representative(s) who establish or otherwise control labor relations.
Identify Earth Born Masonry's representative(s) who establish or otherwise control labor relations.
70. Identify Cornerstone Masonry's labor relations representative(s).
Identify Earth Born Masonry's labor relations representative(s).
71. Identify Cornerstone Masonry's legal counsel on labor relations matters.
Identify Earth Born Masonry's legal counsel on labor relations matters.
72. Identify Cornerstone Masonry's membership status in any employer association.
Identify Earth Born Masonry membership status in any employer association.
73. Identify Cornerstone Masonry's officers.
Identify Earth Born Masonry's officers.
74. Identify Cornerstone Masonry's directors.
Identify Earth Born Masonry's directors.
75. Identify place(s) and date(s) of Cornerstone Masonry's directors meetings.
Identify place(s) and date(s) of Earth Born Masonry's directors meetings.
76. Identify Cornerstone Masonry's owners and/or stockholders.
Identify Earth Born Masonry's owners and/or stockholders.
77. Identify the ownership interest held among Cornerstone Masonry's owners and/or stockholders.
Identify the ownership interest held among owners and/or stockholders of Earth Born Masonry.

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to recognize and bargain with International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL-CIO as the exclusive representative of employees in the following unit:

All employees performing work covered under the terms of the collective-bargaining agreement between the Association and the Charging Union within the jurisdiction of the Charging Union, who are members of any Local Union affiliated with the Charging Union, and also of such other employees recognized by law as part of the appropriate collective bargaining unit.

WE WILL NOT fail and refuse to apply the terms and conditions of the August 1, 2003, to April 30, 2005 collective-bargaining agreement entered into with the Union.

WE WILL NOT fail and refuse to furnish the Union with information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT threaten employees that they should resign from their jobs if they did not want to work nonunion.

WE WILL NOT cause the termination of, or otherwise discriminate against, employees because they support International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL-CIO, or any other labor organization, or engage in union or protected concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, recognize and bargain with International Union of Bricklayers and Allied Craftworkers Local 9 Michigan, AFL-CIO as the exclusive representative of the employees in the unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL abide by all the terms and conditions of the August 2003 to April 2005 collective-bargaining agreement with the Union.

WE WILL make whole all unit employees for any loss of earnings and other benefits resulting from our refusal to

APPENDIX B

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

comply with the terms of the collective-bargaining agreement with the Union, with interest.

WE WILL furnish the Union the information requested in its letter dated November 12, 2003.

WE WILL, within 14 days from the date of the Board's Order, offer Elton Henry and Robert Thomas full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Elton Henry and Robert Thomas whole for any loss of earnings and other benefits resulting from

the unlawful termination of their employment, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files all references to the unlawful terminations of Elton Henry and Robert Thomas, and within 3 days thereafter, notify them in writing that this has been done and that their unlawful discharges will not be used against them in any way.

CORNERSTONE MASONRY CONSTRUCTORS, LLC
AND LANNY MCCORD, D/B/A EARTHBORN
MASONRY, A SINGLE EMPLOYER/ALTER EGOS